

The political-juridical forms of the State in contemporary capitalism and fiscal waivers in health

As formas político-jurídicas do Estado no capitalismo contemporâneo e as renúncias fiscais em saúde

Felipe Galvão Machado¹, Áquilas Nogueira Mendes², Leonardo Carnut³

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ABSTRACT When analyzing the health situation in Brazil, one can notice the reinforcement of a logic that turns the right to health assistance into a hostage of the dynamics of contemporary capitalism. From this perspective, the waiver of tax collection in health in the Brazilian State stands out, leading to tax exemptions that result from the deduction of expenses with health insurance and similes from income tax, as well as fiscal grants to private non-profit entities (philanthropic hospitals) and the chemical-pharmaceutical industry. Thus, this article criticizes those legal provisions, which stress the subservience relation of the State to the logic of capital, identifying, socio-historically, how these forms are directly and indirectly dilapidating the financing of the Unified Health System.

KEYWORDS Healthcare financing. Health expenditures. Capitalism.

RESUMO *Analisando-se a situação da saúde no Brasil, é perceptível o reforço de uma lógica que torna o direito a ela refém da dinâmica do capitalismo contemporâneo. Nesta perspectiva, destaca-se a renúncia de arrecadação fiscal em saúde no Estado brasileiro, trazendo as renúncias fiscais decorrentes da dedução dos gastos com planos de saúde e similes no imposto de renda, como também as concessões fiscais às entidades privadas sem fins lucrativos (hospitais filantrópicos) e à indústria químico-farmacêutica. Assim, este artigo realiza uma crítica a estes dispositivos legais, que acentuam a relação de subserviência do Estado à lógica do capital, identificando, socio-historicamente, como tais formas vêm dilapidando, direta e indiretamente, o financiamento do Sistema Único de Saúde.*

PALAVRAS-CHAVE *Financiamento da assistência à saúde. Gastos em saúde. Capitalismo.*

¹Universidade de São Paulo (USP), Faculdade de Saúde Pública (FSP) – São Paulo (SP), Brasil.
felipegalvaomachado@gmail.com

²Universidade de São Paulo (USP), Faculdade de Saúde Pública (FSP) – São Paulo (SP), Brasil.
aquilasmendes@gmail.com

³Universidade de Pernambuco (UPE) – Recife (PE), Brasil.
leonardo.carnut@gmail.com

Introduction

The largest contradiction expressed by the Brazilian juridical framework is possibly the public-private amalgamation in the health sector. As to responsibility, even if health is considered as a universal right, it is the State's duty¹ (article 196). At the same time, when it comes to the 'private initiative' (article 199), health is allowed to be a target of mercantilism.

It is in this apparent paradox that the State reinforces the logic of the capital and makes health a hostage of contemporary capitalism. Several authors²⁻⁴ report the scenery of intense dispute in the field of public health financing.

In its contemporary financial form, capitalism has a central role in social and economic relationships. In this scenery, political decisions have been oriented in ways that impair the Unified Health System (SUS) and its financing.

The State's subservient relationship with the moves of financial capital is not new. Oliveira⁵ has already pointed out that, since 1999, there were in Brazil political pressures for the control of public expenditure and increased emphasis on speculative activities.

One may notice that, since Fernando Henrique Cardoso (FHC) government, and through Lula and Dilma governments, the logic of policies based on the macroeconomic tripod composed by primary excess supply, inflation limits and floating exchange have been intensified⁶. These Keynesian policies aimed to achieve more demand control and also to ensure financing to the sectors that these governments considered relevant for the economic development.

When it comes to health, the point is to refer to legal dispositions such as Disentailing the Union Incomes (DRU)⁷, the Fiscal Responsibility Law (LRF)⁸ and prominently, the increase in fiscal waivers in the health sector.

These waivers refer to Income Tax (personal and juridical taxpayers) and also to fiscal concessions to non-profit private

entities (philanthropic hospitals) and chemical-pharmaceutical industries. Between 2003 and 2013, the large increase in the total cost of fiscal waivers in those different modalities was outstanding, from R\$8.6 billion to R\$25.4 billion⁹.

With DRU, among other things, it was defined that 30% of the social contributions exaction would be disentailed from its ultimate object and would become available for the federal government's use, not directed to its purpose, which is the social security⁷.

As to LRF, in short, it comes to limiting expenses with health and education employees and also financial expenses related to debt increase – amortization of the original value, incumbencies and interest – of the annual public budget.

Every effort aimed at limiting financial expenses has led to reduction of expenditure in social areas, particularly on health.

As if this were not sufficient, the effects of the contemporary capitalist 'crisis' on the profile of public policies must be taken into account. In a critical perspective of Marxist political economy, the crisis of capitalism lies on a context of occurrence of two main trends, namely the decline in the profits of the productive sector in capitalist economies and, as a strategy to face it, the increase of financial value, in which the capital that provides interest comes to lead the dynamics of capitalism, particularly after 1980, through the appropriation of public funds¹⁰.

That crisis has been used to justify the State's counter-reforms, tending to direct and indirect impacts on resources destined to SUS, since the neoliberal perspective¹¹ stands upon the idea that investment in health is 'overcharging' the State. This is the scenario focused in the present paper. The purpose is to criticize fiscal waivers in the health sector as 'juridical forms'¹² which accentuate the State's subservient relationship with the logic of capital as socio-historically identified. 'Juridical form' is understood here as the ways through which social

relationships are abstracted in the ‘form of market goods’. This implies that juridical laws/ rules/ norms are deduced from social relationships whose sociability is founded on the transit of goods, fundamental for the capital’s moves¹².

Thus, we start from a brief socio-political presentation of social security in the context of Brazilian crisis, in order to emphasize specificities of the capital’s moves in the contemporary capitalist society. As a second step, we detach the role of the payment of public debt interest and the macro-economic tripod as already consolidated forms of expropriation of resources for SUS financing. Lastly, the State’s fiscal waivers (tributary expenses)¹³ in the health sector are discussed as mechanisms which deepen the instability of resources for SUS.

According to Pellegrini¹⁴, tributary expenses refer to financial resources which the State fails to collect. This corresponds to incentives, deductions, exonerations and fiscal reductions on behalf of certain persons, companies, organizations or economic sectors. It has to do with a specific ‘juridical form’ increasingly consolidated in the contemporary State, which the scientific literature has scarcely considered.

Financing social security in the context of the contemporary crisis of capitalism and its effects in the Brazilian State.

The problem of SUS’ financing, along the 30 years of its implementation, requires its unveiling to be associated to social security financing. The 1988 Constitution has established that health, social welfare and social assistance are part of the social security as a single block of sources related to the Social Security Budget (OSS).

According to the Constitution (article

195), it is set that the financing of social security proceeds from resources of the Union, the states, the Federal District and the Municipalities, and from social contributions. These are: the employers’ contribution (which falls upon the wages payroll, the income – Contribution for Social Security Financing – and the profit – Contribution based on Liquid Profit); the workers’ contribution and 50% of the income of contests and omens (lottery).

Along SUS’ existence, this financing scheme – social public fund – has suffered attacks and offered cues about how contemporary capitalism is appropriating resources which pile-up in its budget.

Considering that this public fund is a social evidence of a society’s capacity to finance social rights (including health), Salvador¹⁵ demonstrates that the social classes constantly dispute such resources from funds by. This reinforces the argument that examining the public fund helps to understand the relationship between the State and the capital’s moves.

The State evidences its subservience under the direction of the capital’s moves. Concerning social security financing, O’Connor¹⁶ stresses that the State must exert the functions of accumulation and legitimation on behalf of the ‘continuity of the capitalist system’.

The first attribution allows for the emergence of favorable conditions for strengthening the capital and, at the same time, ensuring work reproduction. On its turn, the second mechanism ensures cohesion and agreement on the part of important parcels of the classes as the prevailing economic project is developed.

From this perspective on the role of the State as the supporter of the capital movement¹⁰, it is implied that, in order to maintain the capitalist mode of production, this same State acts as a fundamental component, being a ‘juridical-political form’ that promotes the basis for capital accumulation.

From the perspective of a social-democratic (Keynesian) interpretation, the State is understood as ‘alien to the moves of the market economy’, constituting itself as an ‘autonomous entity’ to regulate and assign resources towards economic and social development¹¹.

In the conservative view of the ‘mainstream’, the State is the main problem of the economy, and it is stated that fiscal adjustments are the way out for the regularization of its finances, validating reduction of expenses, particularly in social security and, thus, in health¹¹.

For this reason, according to authors who try a ‘synthesis’ of the two first interpretations – the critical and the socio-democratic – the State, as well as promoting the reproduction of capital for certain dominant classes and sectors, must assign resources for the development of the working force and to warrant policies which can promote ‘social harmony’¹⁵.

In order to exemplify how these perspectives are materialized in the realm of the State’s praxis, it is important to recall the Brazilian case with respect to the manners in which taxes are distributed. The most usual interpretation in the realm of health has been that social policies – which are often segmented and aimed at certain social classes – are meant to ensure ‘social harmony’.

Salvador¹⁵ points out that, in Brazil, the tributary load is regressive (that is, tributes weigh more on the income of those who earn less), since the higher percentage of tributes falls upon goods and services (consumption) which burden proportionally more the income of workers and poorer families). It is, thus, clear that there is a correlation of political forces that reveal themselves in the determination of direct and indirect taxes, the latter being the largest basis for the exaction of resources for the State.

The argument adopted in this paper considers that taxes return is a ‘juridical form’ that is necessary for the very reproduction

of capital inside the State. This uncovers the deceptive role of social policies as warrants of ‘social harmony’.

Based on the Family Budgets Research, Rosa, Souza e Silva¹⁷ (POF) 2008-2009, Point out that the largest tributary exaction category refers to incidents related to ‘Goods and Services’. This area may stand for up to 90% of lower income families’ consumption; however, the tributary exaction on ‘Financial Transactions’ contributes with less than 1% of the collected contributions as a proportion of the Gross Product, according to data from the Federal Revenue in 2015.

Thus, based on the critical interpretation^{10,11}, it can be stated that indirect taxation is a tool to establish the functions of accumulation and legitimation in Brazilian contemporary capitalism, to which can be added the context of profits decline in the capitalist system. For that reason, there is the trend to increase the dynamics of capital in the logic of State policies.

The role of public debt interest and the Brazilian macroeconomic policies: implications for SUS

According to Mendes¹⁰, health is an ongoing target of political disputes both in Brazil and in the world, since resources assigned to this sector can be appropriated and allotted to other purposes, particularly in what refers to the payment of interest of the Brazilian public debt.

About the world plan, Chesnais¹⁸ points out that, in the current phase of capitalism, the prevalence of speculative financial activities has been observed, promoting the State’s subservience to the market. The most frequent form of this occurrence refers to the adoption of restrictive economic measures (reduction of expenses) by the governments, aiming to attend the interests of the

accumulation, centralization and capital reproduction regime.

It is in this route that the State's indebtedness in response to the interests of financial capital can be witnessed. Priority is given to the increase of financial profitability through the emission of public bonds to be offered in the market to financial investors, thus allowing the State to collect resources.

This form of resource collection somehow intensifies the extension of the process of the States' indebtedness¹⁸, due to the increasing volume of the payment of those public debts' interest. This financial expense will eventually suck up a significant parcel of the State's resources, among which stand out those destined to social policies in general, and particularly to health.

Furthermore, the financial unruliness adopted by the governments benefits institutional investors in modalities such as, among others, pension funds, collective application funds, insurance societies and hedge funds, which, in the context of contemporary capitalism, are forced to assume larger risks trying to attain larger profits.

When investors assume larger risks, the governments tend to direct economic policies on behalf of the shareholders' class. Thus, the role of the State as a caution provider in this movement becomes evident and constitutes the 'political form' of capital reproduction. Whenever the fiduciary role of this 'political form' is menaced, the shareholders class reacts by removing exchange values, which may come to affect economic liquidness.

In Brazil, this 'political form' (the State) came to direct the economic policy adopted since FHC government and, in its essence, has not been modified during Lula and Dilma governments, which reinforces the argument about the political – pro-capital – nature of the State.

This economic policy referred to the adoption of the already mentioned macro-economic tripod, which eventually reduced social public expenses. In practice, this

tripod has contributed to the intensification of the approbation of public fund resources, ensuring the payment of interest and incumbencies of the public debt. In this logic, Salvador¹⁵ points out the increasing importance of DRU in the performance of this role, by reducing resources for social security and health.

Lacking sufficient resources, SUS is facing difficulties to operationalize its principles, particularly universality. As a consequence, more opportunities for the exploration of health as a business are offered, allowing the significant advance of private health plans and insurances¹⁹.

There is thus, in the social feeling, a deeply rooted conception that SUS should be avoided since it is a 'low quality' system that, according to both medium and higher classes, must be mainly used by the poorest.

This rhetoric falls back on the discourse that private plans and insurance tend to unload SUS' queues. However, studies point out that, in duplicated health systems (where a significant private offer coexists with the public offer), as is the case in Brazil, the trend is to resort to both systems.

The State's fiscal waivers in the health sector as a means of stressing the unstable condition of the provision of resources for SUS

The novelty in the State is the increasingly expressive juridical form for the capital's reproduction: 'fiscal waivers' in the health sector (known in the economic slang as 'tributary expenses').

Fiscal waivers in the health sector comprise a complex set of social groups in different sociopolitical contexts and specific situations of individual realities. They may be related to a variety of fiscal benefits such as: exemptions, reductions, deductions and zero aliquot.

One may properly ask: why does the State adopt this mechanism of fiscal waivers in the health sector, thus encouraging a certain sort of behavior by the taxpayers, or else allowing the reduction/ exemption from taxes/ contributions due by certain dominant groups?

According to Surrey²⁰, based on the social-democratic interpretation, those waivers are offered in order to stimulate the expansion of economic agents' investments. This ultimately implies the reduction of those agents' tributary load. For instance, the Secretariat of Strategic Affairs²¹ considers that the State is performing public policies when it establishes 'tributary exonerations' and when it lessens the tributary onus on certain economic agents to induce social goals our purposes – which, ultimately, reduces the volume of resources that the State would have available to finance SUS.

In this line of reasoning, fiscal waivers can diminish the amount of taxes to be collected, can privilege only a parcel of the taxpayers, can be likened to misguidance as to the basic structure of tributes and tend to purposes that could be achieved through direct public expenses.

It is important to make it clear that renuncements can assume several forms, such as: reducing the tributary basis, minimizing the aliquot falling upon the basis, lessening the amount to be paid or postponing the payment^{9,13,14,21}.

Furthermore, it is necessary to apply a basic 'two steps' rule to identify fiscal waivers in the assemblage of Brazilian tributary system^{9,13,14,21}.

a) using the reference tributary system, that is, the available Brazilian tributary legislation, aiming to identify 'diversions' from the general rule. In the case of health, identifying which 'juridical forms' are depleting, from the Social Security budget, resources which were originally meant for it;

b) evaluating which waivers could be

replaced by direct expenses, linked to government programs. In order to do it, it is pertinent to notice the Brazilian Federal Revenue's initiative to 'limit' those benefits which, at the same time: (i) reduce the potential exaction; ii) increase the taxpayer economic allowance; (iii) conceive an exception to a tribute's norm, and apply exclusively to a particular group of taxpayers.

In this specific case, it is possible to notice the use, by the State, of blind pleas to avoid problems caused by waivers for the accomplishment of its public policies and, at the same time, being able to exact the minimum due to the maintenance of its public fund.

From the critical perspective, this is the visceral commitment of the State with the process of capital accumulation. Irrespective of the government 'in duty', the State, with a contradictory movement, does not entirely give up exaction to maintain the payment of debt's interest and applies fiscal waivers in those sectors whose investments in the financial market are bulkier, as is the case of the health sector¹⁸.

It is essential to point out that the decision about what is involved and what does not comply with the criteria proposed by the Federal Revenue Department (the two steps rule) is arbitrary. The National Association of Fiscal auditors of Brazilian Federal Revenue (Unafisco) criticizes the ways through which fiscal waivers are formulated and calculated with the methodology designed by the Federal Revenue, particularly those including deductions in the individual Income Tax (IRPF) for health, education and supplementary providence^{9,21,22}.

This criticism is based in the conception by the Secretariat of Strategic Affairs²¹ about the fiscal exaction renuncements by the State, which include incentives, deductions, exonerations and the very fiscal waivers, since they aim at compensating taxpayer's expenses with services that, essentially, should be provided by the public power.

Thus, public resources indirectly and partially finance the consumption of a private service instead of a public policy. Furthermore, similar reasoning can be applied to incentives granted to cultural production, philanthropic entities and industrial and/or regional policies^{21,22}.

In this sense, it must be stressed that the Union concentrates the largest part of the tributes exaction. And that (constitutional) transfers of resources to the States and Municipalities compose a large part of budgets granted to subnational spheres. In addition, it must be demonstrated that only the federal government can measure fiscal waivers and, thus, the lack of evaluation of tributary expenses in the subnational spheres reduces the States' autonomy and the control on public accounts²².

An example of the State's renouncement to fiscal exaction, which is exclusively in charge of the Federal Revenue, can be observed in the Merchandise and Services Circulation Tax (ICMS), the main exaction tribute pertaining to the States' sphere. Aiming at attracting investments in industrial activities and/or specific segments of subnational spheres, it is possible to exempt this tax (in certain forms and specificities). Thus, the absence of measurement of these waivers hinders the analysis of impacts that fiscal policy causes on public accounts concerning the effectiveness of exaction reduction (ICMS exempted) in states in order to promote economic development²².

Obviously, one can notice the Brazilian tributary regression characteristic, influenced mainly by the indirect costs of social contributions in the country¹⁵, which are the Brazilian State's main exaction form to finance SUS.

Based on this comprehension of Brazilian tributary system, it must be pointed out that fiscal waivers in the health sector have presented a substantial increase in IRPF e also in IRPJ (Juridical Income Tax), pharmaceutical industry (medicines and chemical products) and non-profit organizations (philanthropic

hospitals). As already quoted in the introduction, total increases in fiscal waivers in the health sector leaped from R\$8.6 billion, in 2003, to R\$25.4 billion, in 2013⁹.

Furthermore, fiscal waivers in the health sector destined to IRPF, which increased from R\$3.745 billion, in 2003, to R\$9,518 billion, in 2013, and to philanthropic hospitals, from R\$2.613 billion to R\$7.381 billion in the same period, were those that underwent the largest increase in absolute terms.

This situation evidences the regressive nature of the Brazilian tributary system, since the first segment is intimately linked to expense power, and the second modality is often (exclusively) financed by taxes and social contributions, which have an 'indirect' – proportionally larger – impact on workers' and low income families' revenue^{9,10,21,22}.

Thus, the analysis of the main fiscal waivers in the Annual Budget Law Project (Ploa) for 2018, for instance, identifies that the health sector is in the third position as to the amount of renouncement to fiscal exaction that it provides, which stands for 14% of the total tributary expenses in Ploa 2018 and corresponds to R\$ 39 billion of fiscal waivers in this sector. Therefore, an increase in those waivers is become clear when compared to Ploa 2017, that registered R\$32 billion²³.

It can be notoriously inferred a consumption signalization via plans and/or private health insurance, since there are political plans that modify the ways the financing of SUS services are managed, made accessible and offered. In this form of financial management, it must be strongly emphasized that individual private medical expenses stand for 4.64% of the total 14% of social waivers in the health sector and are thus, when deduced from IRPF²³, the most representative item.

It is thus reinforced the argument that the lack of legal limits to the IRPF reduction allows a larger use of this mechanism, since the expectation on Ploa 2018 is some R\$13 billion in IRPF deductions, R\$4.5 billion higher than Ploa 2017²³.

Therefore, it is possible to indicate the existence of a socio-historical trend towards fiscal waivers as the more expressive political-juridical form of subservience of Brazilian State to contemporary capitalism identifiable in the health sector. In this way, it can be understood that, under the excuse of bypassing 'fiscal crises', under the shield of capital loaded with interest, one is witnessing the adoption of mechanisms, ensured by constitutional amendments, which can, legitimately, disentail resources from the public fund and direct them to other activities and/or sectors where the State deems they are necessary.

In this sense, fiscal waivers in the health sector are one of mechanisms that implicitly operate to undermine the right to health. It can thus be inferred that, in the health sector, discretionary decisions may occur in public administration, since the Executive and Legislative powers can present discrepant interpretations and aims regarding fiscal exemptions, deductions and reductions offered to individuals, companies and non-profit organizations.

Final remarks

In the scenery of Brazilian contemporary capitalism, particularly after 1999, stands out the increase in *status quo* economic and legislative policies favoring the valorization of capital, assuming the political-juridical form of the State standing on a macroeconomic tripod – primary excess supply, inflation limits and floating

exchange – which engenders ever-growing exploitation of merchandise value and income concentration on behalf of dominant classes. Furthermore, it is emphasized that the tributary exaction falling upon goods and services is higher than exaction falling on financial profits, which uncovers the logic of inciting speculative activities.

As to health, it is inferred that public fund resources, composed of taxes and social contributions by Brazilian population, forcing the State to pay interest on the public debt, are appropriated by the dominant classes.

In this sense, the State serves the same master through two 'apparently' opposite mechanisms. On the one side, it warrants public fund resources, which allow its commitment with the payment of debt interests, thus keeping the capital on the move. On the other side, it fails to finance social policies (here, with a focus on health) by means of fiscal waivers, aimed to drain resources to financial sectors.

When the attention is focused on the situation of health financing in Brazil, one can notice the development of a legal framework that allows for the enlargement of fiscal waivers. Thus, fiscal waivers are used politically, prone to expansion or introduction of new modalities.

Therefore, the understanding is that the political use of fiscal waivers in the health sector tends to contribute to the increase in the reproduction of indirect expenses by the State's, which affects SUS financing, either directly or indirectly, since the system presents structural problems since its origin. ■

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